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FISCAL IMPACT STATEMENT

LS 7305

BILL NUMBER: HB 1899

NOTE PREPARED: Feb 28, 2003

BILL AMENDED: Feb 27, 2003

SUBJECT: Bail and Bail Procedure.

FIRST AUTHOR: Rep. Frizzell

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- (A) It specifies that a bail bond may be written only by an insurer.
- (B) It provides that if a defendant is charged with a misdemeanor and is a resident of Indiana, the court may require the defendant to execute a bail bond by depositing cash or securities in an amount not less than 10% of the bail.
- (C) It provides that if a defendant is charged with a felony or is not a resident of Indiana, the court may require the defendant to: (1) execute a bond secured by real estate; or (2) execute a bail bond by depositing cash or securities in an amount not less than 25% of the bail.
- (D) It requires a defendant admitted to bail to pay a \$20 fee. It requires: (1) 50% of the fees to be deposited in a county's supplemental public defender services fund; and (2) 50% of the fees to be deposited in a county's general fund and credited to a county jail improvement account.
- (E) It allows a county to use money in the account only for the operation, construction, repair, remodeling, and enlarging of a county jail.
- (F) It establishes a procedure for the forfeiture of bail bonds and cash and securities used as bail, requiring a clerk to send a notice of judgment not later than 45 days after the forfeiture.
- (G) It provides that amounts collected for a forfeited bail bond or for forfeited cash or securities must be deposited in the county general fund after certain amounts are deducted.
- (H) It provides that certain persons are not eligible to post bail by depositing cash or securities.

Effective Date: July 1, 2003.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) *Provision G:* Potential Revenue Loss to the Common School Fund -- This provision potentially reduces the amount of revenue deposited in the Common School Fund. Under current law and by state constitution, defendants admitted to bail by depositing 10% of the bond with the clerk of the court and who fail to appear in court, will forfeit the 10% deposit and any forfeited assets would be deposited in the Common School Fund. As proposed, defendants would forfeit both the 10% deposit and the remaining bail that would have had to be deposited and all forfeited assets would be deposited in the county general fund instead of the Common School Fund.

As an example, under current law, a defendant who has bail set at \$1,000 could be permitted by the court to deposit 10% (or \$100) of the bail amount with the clerk of the court. If the defendant fails to appear in court when ordered to do so, the clerk of the court retains the 10% deposit until it determines whether the crime victim files a civil lawsuit against the defendant based on the crime for which the defendant has been accused. If no civil lawsuit is filed, then the 10% deposit is forfeited and deposited in the Common School Fund.

As proposed, if the defendant fails to appear in court, both the 10% deposit (\$100) and the remaining bail (in this case \$900) would be available in a civil lawsuit. The defendant would be responsible for producing the remaining \$900. If no civil lawsuit is filed, then both the 10% deposit and the remaining bail would be forfeited and deposited in the County General Fund.

The number of civil actions that result from crime victims filing claims against alleged perpetrators is not known.

Explanation of Local Expenditures: (Revised) *Provision H:* Under current law, defendants who are released after depositing 10% of the bail with the clerk of the court and who fail to appear for a court hearing are still eligible for release under the bail posted. If accused persons are not able to afford to secure bond for pretrial release from a surety agent, this bill could increase the number of criminal defendants who would remain in jail prior to trial. The Indiana Sheriffs Association estimates that the daily cost of incarcerating one person in jail is \$44.

Explanation of Local Revenues: (Revised) Any effects from this bill will depend on the number of criminal defendants who fail to appear in court when ordered to do so. The percentage of cases where criminal defendants fail to appear in court hearings is not known. As proposed, criminal defendants failing to appear at a scheduled court hearing would be required to either execute a bail bond, deposit cash or securities in an amount equal to bail, or execute a bond secured by real estate.

Background Information: If a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund. This bill potentially increases revenue to the Late Surrender Fee if more criminal defendants use a bail bondsman and fail to appear in court due to the potential increase in number of bail bonds issued.

Provision B and C: This provision could increase the revenue that the county collects if the clerk may retain a larger amount of the deposit to pay for fines, costs fees, and restitution.

Under current law, the court may set bail for a person accused of either misdemeanors or most felonies and allow this person to deposit cash or securities for 10% of the bail that has been set with the clerk of the court.

If the person is found not guilty, then the court may charge a \$50 administrative fee. If the person is convicted, the court may retain all or a portion of the cash or securities to pay all of the fines. The clerk is also required to retain from the deposit any additional amounts to pay for fines, fees restitutions, and publicly paid costs of legal representation.

This bill would restrict the 10% deposit to defendants charged with a misdemeanor who are residents of Indiana. If the person is charged with a felony or is not a resident of Indiana, the person would either have to execute a real estate bond or a bail bond with the clerk of the court in an amount not less than 25% of the bail. The larger deposit would result in larger amounts retained by the clerk when a defendant is convicted of a felony because the clerk would be able to recover added revenue from fees, fines, and any costs of publicly paid legal representation during court proceedings.

The following shows the collections from the Bond Administration Fees for the past five calendar years:

CY	Trial Courts	City and Town Courts	Total Revenue Collected
1997	\$819,207	\$150,011	\$969,218
1998	\$1,018,571	\$167,152	\$1,185,723
1999	\$983,253	\$109,499	\$1,092,752
2000	\$1,133,952	\$144,573	\$1,278,525
2001	\$1,212,065	\$250,838	\$1,462,903

Provision D: The \$20 fee that would be collected by the courts will depend on the number of bail bonds that are posted with the clerks. There are no published figures on the number of bail bonds that are posted in a year. Proceeds from this fee would be split between the supplemental public defender services fund and a separate account in the county general fund for jail improvements.

Restrictions on Cash Deposit With Clerk: Defendants who are currently released from custody from any jurisdiction on any charge, who failed to appear in court within the preceding five years or who have been convicted of a felony in the previous five years, would not be permitted to deposit money with the clerk of the court. They would be restricted to using a bail bond agent in order to secure pretrial release.

If these defendants fail to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund. This bill potentially increases revenue to the Late Surrender Fee if more criminal defendants use a bail bondsman and fail to appear in court due to the potential increase in number of bail bonds issued.

Local governments reported receiving the following amounts from the Late Surrender Fee between CY 1997 and CY 2001.

CY	Trial Courts	City and Town Courts	Total Revenue Collected
1997	\$804,525	\$2,640	\$807,165
1998	\$739,321	\$10,528	\$749,849
1999	\$820,023	\$11,665	\$831,688
2000	\$1,041,349	\$16,568	\$1,057,917
2001	\$588,100	\$128,923	\$717,023

Provision G: (See Explanation of State Revenues) This bill would allow counties to receive revenues from forfeited assets when accused persons fail to appear in court. Currently, any forfeited assets are deposited in the Common School Fund as directed by the state constitution.

State Agencies Affected:

Local Agencies Affected: Trial courts, county jails.

Information Sources: *Indiana Judicial Service Reports*, 1997 through 2001.

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